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7 Attorneys for Nugget Construction Co.,  
8 Inc., and USF&G, Defendants

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

11 UNITED STATES OF AMERICA for the )  
12 use of NORTH STAR TERMINAL & )  
13 STEVEDORE COMPANY, d/b/a NORTHERN )  
14 STEVEDORING & HANDLING, and NORTH )  
15 STAR TERMINAL & STEVEDORE COMPANY, )  
16 d/b/a Northern Stevedoring & )  
17 Handling, on its own behalf, )

No. A98-009 CIV (HRH)

18 Plaintiffs, )

19 and )

20 UNITED STATES OF AMERICA for the )  
21 use of SHORESIDE PETROLEUM, INC., )  
22 d/b/a Marathon Fuel Service, and )  
23 SHORESIDE PETROLEUM, INC., d/b/a )  
24 Marathon Fuel Service, on its own )  
25 behalf, )

Intervening Plaintiffs, )

and )

METCO, INC., )

Intervening Plaintiff, )

vs. )

21 NUGGET CONSTRUCTION, INC.; SPENCER )  
22 ROCK PRODUCTS, INC.; UNITED )  
23 STATES FIDELITY AND GUARANTY )  
24 COMPANY; and ROBERT A. LAPORE, )  
25

Defendants. )

AFFIDAVIT OF  
L.D. "RANDY" RANDOLPH  
IN SUPPORT OF NUGGET'S  
MOTION FOR SUMMARY JUDGMENT  
ON SHORESIDE'S STATE  
LAW CLAIMS

1 STATE OF ALASKA )

2 )

3 )

4  
5 L.D. "Randy" RANDOLPH, being first duly sworn upon oath, deposes  
6 and states as follows:

7 1. I am the owner of LDR Engineering Services, Inc. LDR  
8 was hired by Nugget Construction, Inc. to perform Project Management  
9 services for Nugget on the Homer Spit repair and extension project.  
10 During all times relevant to the events at issue in the present  
11 litigation, I acted in that capacity on behalf of Nugget. I am over  
12 the age of eighteen and am competent to testify in this matter.

13 2. On or about September 28, 1996, the U.S. Corps of  
14 Engineers ("USCOE") awarded Nugget Contract DACW85-96-C-0020 to repair  
15 and extend the Homer Spit in Seward, Alaska (the "Project"). Attached  
16 hereto as Exhibit 1 is a true and correct copy of Contract No. DACW85-  
17 96-C-0020. USF&G provided a payment bond on the Project. Attached  
18 hereto as Exhibit 2 is a true and correct copy of Payment Bond 99-  
19 0120-50298-96-5.

20 3. On January 15, 1997, Nugget entered into a Material  
21 Contract with Spencer Rock for the supply and transport of armor, toe  
22 and filter stone rock from the Spencer Quarry, located in Seward,  
23 Alaska, to a barge docked in Seward. Attached hereto as Exhibit 3 is  
24 a true and correct copy of the Material Contract, December 18, 1996.  
25 Between the Spencer Quarry and the Seward dock, the rock traveled in

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1 four distinct segments. First, after blasting, rocks were gathered  
2 and loaded into trucks at the Spencer Quarry. These trucks  
3 transported the rock from the Spencer Quarry to the Alaska Railroad  
4 Corporation ("ARRC") station, where the rock was loaded into ARRC rail  
5 cars. This work was performed by Spencer Rock (which was later  
6 assisted by Nugget). Second, the rock traveled by ARRC rail car to  
7 Seward, where it was unloaded from the rail cars onto a "siding" at  
8 the ARRC rail yard in Seward. Third, the rock was transported by  
9 truck from the siding at the ARRC rail yard in Seward to the Seward  
10 dock. Fourth, and finally, the rock was loaded by North Star into  
11 "skip boxes" and from the boxes at the Seward dock onto barges, which  
12 carried the rock to the Homer Spit.

13 4. Spencer Rock commenced performance on or about January  
14 15, 1997. In April 1997, Nugget became concerned that Spencer Rock  
15 was not producing enough quantities of conforming rock for the  
16 Project. First, Nugget visited the Spencer Quarry and found large  
17 stockpiles of nonconforming rock. Second, Spencer Rock's major pieces  
18 of equipment for operating the Spencer Quarry had been repossessed by  
19 Spencer Rock's bank. In light of these developments, in early April  
20 1997, Spencer Rock approached Nugget for assistance in carrying out  
21 Spencer Rock's duties under the Material Contract. Spencer Rock and  
22 Nugget subsequently executed a Support Agreement on April 23, 1997.  
23 Attached hereto as Exhibit 4 is a true and correct copy of the Support  
24 Agreement, April 23, 1997. Per this agreement, the parties agreed  
25 that, in exchange for Nugget's support of Spencer Rock's work under

1 the Material Contract, Nugget would recover from Spencer Rock, or  
2 "backcharge," the amounts owed to Nugget by Spencer Rock per the  
3 Material Contract. Nugget entered into the Support Agreement with  
4 Spencer Rock to ensure that its performance on its contract with the  
5 Federal Government would not suffer from anticipated difficulties in  
6 Spencer Rock's performance of its contract with Nugget. There was no  
7 other purpose.

8 5. Nugget's support efforts to Spencer Rock were provided  
9 exclusively to Spencer Rock. Nugget never offered or provided its  
10 support services to Shoreside, Metco or North Star.

11 6. The total amount of rock that Spencer Rock was  
12 contractually obligated to transport, and that was in fact transported  
13 with Nugget's assistance, from the Spencer Quarry to the Nugget barges  
14 in Seward was equal to ten barge loads.

15 7. Between May 8 through August 8, 1997, Nugget paid  
16 Spencer Rock \$197,184.66 for work performed under the Material  
17 Contract.

18 8. Based on the total quantity of rock delivered for the  
19 project at the rates and terms set forth in the Material Contract, the  
20 total value of rock produced by Spencer Rock was \$1,623,892.50.  
21 Nugget's costs associated with rendering assistance to Spencer Rock  
22 pursuant to the Support Agreement were \$1,878,138. In addition, as a  
23 direct result of Spencer Rock's failure to provide rock that conformed  
24 to the Material Contract, Nugget incurred additional expenses in  
25 excess of \$1,213,380. Thus, the total amount of costs and expenses

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1 that Nugget incurred resulting from its dealings with Spencer Rock  
2 exceeded the amount that Nugget agreed to pay Spencer Rock under the  
3 Material Contract by \$1,664,811.

4 9. Nugget never manifested any intention, either in  
5 direct statements, oral or written, to Shoreside representatives, or  
6 indirectly in its conduct and activities in performing its work in  
7 connection with the Homer Spit Project, to be contractually bound to  
8 Shoreside for purchases made by Spencer Rock from Shoreside, which  
9 includes the April 8, 1997 and May 21, 1997 fuel car purchases that  
10 were specifically ordered by Mr. LaPore on behalf of Spencer Rock. I  
11 expressly informed Mr. Lechner that Nugget would not pay, or otherwise  
12 guarantee payment, for such services.

13 10. There was never any express agreement between Nugget  
14 and Mr. LaPore that Mr. LaPore or Spencer Rock would act as Nugget's  
15 agent in the prosecution of Spencer Rock's work under the Material  
16 Contract. Further, there was never a manifestation on the part of  
17 Nugget that Spencer Rock may act on Nugget's account.

18 11. Nugget's payments to Spencer Rock for its work under  
19 the Material Contract were made exclusively to Spencer Rock and never  
20 to Shoreside.

21 12. On May 8, 1997 Nugget paid Spencer Rock \$147,184.66  
22 for the first two barge loads of rock and, between May 8, 1997 and  
23 August 8, 1997, Nugget paid Spencer Rock an additional \$50,000,  
24 totaling \$197,184.66.

FURTHER your affiant saith not.

L.D. Randolph  
L.D. RANDOLPH

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of April, 2006.  
2006.



Teresa R. Foelchertle  
Printed Name: Teresa R. Foelchertle  
NOTARY PUBLIC in and for the State  
of Alaska, residing at Wasilla  
My Appointment Expires March 10, 2009

P JAD Randolph Affidavit Shoreside MSJ State Law 99310.0002

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